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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,538	08/03/2001	Michio Okamura	116-990299	8044

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EXAMINER
HENDRICKSON, STUART L

ART UNIT	PAPER NUMBER
1754	

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
921538	Okamura
Examiner	**Group Art Unit**
Hendrickson	1754

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 4/18/03.

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1, 2, 4, 6, 9, 11 is/are pending in the application.

Of the above claim(s) 2, 7 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 4, 6, 11 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)–(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)–(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

☐ Information Disclosure Statement(s), PTO–1449, Paper No(s). _____

☒ Notice of Reference(s) Cited, PTO–892

☐ Notice of Draftsperson's Patent Drawing Review, PTO–948

☐ Interview Summary, PTO–413

☐ Notice of Informal Patent Application, PTO–152

☐ Other _____

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Miyabayashi et al.

The reference teaches in ex. 1-1 a material having the claimed d002 spacing. Although it differs in the way it was made, any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show that the same process of making, see In re Brown, 173 U.S.P.Q 685, and In re Fessmann, 180 U.S.P.Q. 324. The intended use does not limit the material.

Claims 4, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyabayashi et al.

The reference teaches the carbon, but not a capacitor. However, use in a capacitor is taught in column 12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the carbon of Miyabayashi as a capacitor because doing so exploits its electrical properties. Concerning claim 11, holding plates in a confined structure is an obvious expedient to prevent ruining the battery during shipping. The effect 'limiting expansion' is deemed possessed by the fact that it is a confining structure.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyabayashi et al. as applied to claims 1, 4 and 11 above, and further in view of Suzuki et al.

Miyabayashi does not teach the claimed solvent/electrolyte. Suzuki does in column 10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the claimed material in the system of Miyabayashi because doing so provides a ammonium electrolyte suggested in col. 11.

Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Takahashi et al.

Takahashi teaches in CE 4 active carbon/carbon having the claimed d-spacing. While not teaching how the activation was performed, the material of Takahashi does not appear to differ; where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show that the same process of making, see above.

Applicant's arguments filed 4/18/03 have been fully considered but they are not persuasive. Claim 1 recites the d spacing, which Miyabayashi teaches. Alkali activation is not required. The claims do not require the dimension limiting features argued; the claims are open to the interpretation in the rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (703) 308-2539.

Stuart Hendrickson
examiner Art Unit 1754